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10/698,147	10/31/2003	Richard D. Zaun	15903D-US	2824
30689	7590	05/02/2006	EXAMINER	
DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265			KEENAN, JAMES W	
			ART UNIT	PAPER NUMBER
			3652	

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/698,147  
Filing Date: October 31, 2003  
Appellant(s): ZAUN ET AL.

**MAILED**

MAY 02 2006

**GROUP 3600**

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W. Michael Dixon  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 2/23/06 appealing from the Office action  
mailed 6/08/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,100,277                      Musil                      3-1992

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Musil.

Musil shows an apparatus for transporting and filling containers 18 with material, including a chassis supported by wheels 37, 38, hopper 46, conveyor 36 having a proximal end 41 disposed beneath the hopper outlet to receive material therefrom and a distal end 42 for moving material into an opening in the container, wherein the chassis includes a hitch 29 for coupling the chassis to a container chassis 17 supporting the container. The hopper 46 clearly has a "lower outlet" 102, as broadly claimed, even though it is on the side of the hopper. Similarly, the container 18 is considered a "removable freight container", as broadly claimed, even though no particular removing structure is disclosed. The container is not claimed as being removable from anything in particular or in any particular manner.

Re claim 3, since both the angle and speed of the conveyor can be adjusted, it is considered inherent that the conveyor is "operable at a speed", as broadly claimed, such that at least some of the material could or would follow an arcuate path under certain operating conditions as it moves into the container. Since the type of material is not recited in the claims, applicant's statement that it is undesirable to "throw" asphalt into the container is not germane, as merely having the capability to do so is all that the claim requires.

Claims 2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musil.

Musil does not show the hitch to be a fifth wheel hitch.

Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Musil by utilizing a fifth wheel hitch, as this would simply be an alternate equivalent means of connecting vehicles together, the use of which would neither require undue experimentation nor produce unexpected results.

Re claims 4-6, Musil does not state the exact speed and angle of the conveyor. However, it would have been obvious for one of ordinary skill in the art at the time of the invention to have operated the conveyor of Musil at a speed of 2200 feet per minute and at a 15 degree angle, since it has been held that where the general conditions of a claim are disclosed, discovering an optimum or workable range or value involves only routine skill in the art, especially since both of these operating characteristics (speed, angle) are disclosed as being adjustable.

#### **(10) Response to Argument**

Appellant argues that Musil fails to show a hopper having “an open upper end and a lower (bottom) outlet” (emphasis original), implying that a lower outlet is equivalent to the bottom of the hopper. This is simply not the case. The claim merely requires “a lower outlet” and “an open upper end”. While the outlet of Musil is indeed on the side of the hopper 46, it is clearly lower than the open upper end. “Lower” is a term of degree; it does not equate to bottom.

Appellant further argues that Musil fails to show a removable freight container, asking “If the disclosure ... does not indicate that the container is removable how can the hopper ... be considered a removable freight container?” (To avoid confusion with

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hopper 46, it is noted that hopper 18 of Musil referred to above is analogous to the freight container set forth in the claims). This is simply because the container doesn't have to be removable from the chassis. A "removable freight container" supported on a chassis is not necessarily the same thing as a freight container "removably supported on a chassis". The former does not require the container to be removable from anything in particular, much less in any particular manner. While it is highly likely that the container of Musil is indeed removable in some way from the frame 17 (chassis), even if it isn't, it still meets the claim recitation because it is clearly "removable" at least from the conveyor by virtue of the hitch 29. Appellant further asserts that "the hopper of Musil certainly is not a freight container ...". This is simply untenable. The claimed freight container merely has to be supported on a chassis and have an opening for receiving materials from the conveyor. Container 18 of Musil clearly has these features.

Appellant argues claim 3 by stating that Musil teaches away from operating the conveyor at a speed and angle to throw material such that it follows an arcuate path, in that it would be undesirable to convey asphalt in this manner. Again, this is immaterial and beyond the scope of the claims. To anticipate an apparatus claim, a reference need only show the positively claimed structural limitations and be capable of performing, without modification, any functional recitations. Musil does not need to explicitly teach or suggest the feature, as in an obviousness rejection, but merely be able to accomplish the recited functional limitation. As previously noted, since the speed and angle of Musil's conveyor are adjustable, it is clearly capable of "throwing material" into the container such that it follows an arcuate path. Furthermore, the apparatus of Musil is

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believed to meet this claim limitation even as it is explicitly disclosed, because if the material had any horizontal component of velocity, which it inherently does, it would at least initially have some arcuate motion.

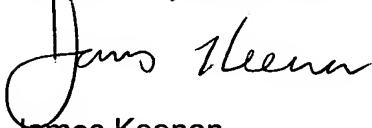
Appellant argues claim 2 separately by asserting that Musil lacks a suggestion to use a fifth wheel hitch because there is no chassis supporting a removable freight container. However, since it is believed that Musil does show such a freight container, as set out above, the examiner simply reiterates the opinion that a fifth wheel hitch would merely be an alternate equivalent means of connecting together two vehicles. Finally, although appellant makes a conclusory statement regarding claims 4-6, since no specific arguments are set out for these claims individually, the rejections thereof as set out above are believed adequate without further comments.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



James Keenan

4/28/06

Conferees:

DU EL 